

FILED  
Clerk  
District Court

FEB 21 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

Case No. CV-04-0001

**ORDER:**

YU SUK CHUNG,

Plaintiff,

vs.

WORLD CORPORATION,

Defendant.

- (1) **GRANTING** plaintiff's motion to amend judgment;
- (2) **STRIKING** juror's affidavit with leave to allow plaintiff to file a motion to reconsider within fourteen days;
- (3) **DENYING WITHOUT PREJUDICE** plaintiff's motion for attorney's fees and costs;
- (4) **DENYING WITHOUT PREJUDICE** plaintiff's motion for sanctions;
- (5) **DENYING** defendant's motion for an award of attorney's fees and costs; and
- (6) **DENYING** defendant's motion for certification.

THIS MATTER came before the court on February 16, 2006, for hearing of Plaintiff's motion to amend judgment, Defendant's motion to amend judgment, Plaintiff's motion for attorney's fees and costs, Defendant's motion for attorney's fees and costs, Defendant's motion for Federal Rule of Civil Procedure Rule 54(b) certification, and Plaintiff's motion for sanctions. Plaintiff Yu Suk Chung appeared personally and by and through his attorneys, Colin Thompson and Robert T. Torres; Defendant World Corporation appeared by and through its attorney, Ignacio C. Aguigui.

**THE COURT**, having fully considered the arguments of the parties,

- (1) **GRANTS** plaintiff's motion to amend judgment;
- (2) **STRIKES** juror's affidavit with leave to allow plaintiff to file a motion to reconsider within fourteen days;
- (3) **DENIES WITHOUT PREJUDICE** plaintiff's motion for attorney's fees and costs;
- (4) **DENIES WITHOUT PREJUDICE** plaintiff's motion for sanctions;

1 (5) **DENIES** defendant's motion for an award of attorney's fees and costs; and

2 (6) **DENIES** defendant's motion for certification.

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5 **I. Background**

6 The trial for this breach of employment contract and fraudulent misrepresentation case  
7 commenced on October 31, 2005. On December 6, 2005, after a twenty day trial and four day  
8 deliberation, the jury rendered a verdict in favor of Plaintiff on his claim for breach of contract in the  
9 amount of \$136,665.00. Accordingly, the court entered judgment on December 8, 2005, awarding  
10 Plaintiff \$136,665.00 for his breach of contract claim. Judgment as to Breach of Contract, No. 186  
11 (Dec. 8, 2005). The court, unable to receive a unanimous verdict from the jury for Plaintiff's claim  
12 for fraudulent misrepresentation, ordered a mistrial as to that claim. Notice of Order for Mistrial as  
13 to Plaintiff's Fraudulent Misrepresentation Claim, No. 187 (Dec. 8, 2005).

14 Plaintiff filed his motion to amend judgment, motion for attorney's fees and costs, and  
15 motion for sanctions on December 22, 2005. Motion to Amend Judgment Pursuant to Rule 59, No.  
16 191 (Dec. 22, 2005); Motion for Attorney's Fees and Costs, No. 193 (Dec. 22, 2005); Motion for  
17 Sanctions, No. 194 (Dec. 22, 2005). Defendant filed his motion for attorney's fees and costs  
18 pursuant to Rule 58, motion to amend judgment, and motion for certification on December 22, 2005.  
19 Notice of Motion and Motion for Certification Pursuant to Rule 54(b) or in the Alternative to Amend  
20 Judgment, No. 197 (Dec. 22, 2005); Notice of Motion and Motion for Costs Pursuant to Rule 68 or  
21 in the Alternative to Amend the Judgment to Include Costs, No. 199 (Dec. 22, 2005).

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## II. ANALYSIS

### A. PLAINTIFF'S MOTION TO AMEND JUDGMENT: STATUTORY DAMAGES

Plaintiff moves this court under Federal Rule of Civil Procedure Rule 59(e) to amend the judgment to include statutory damages equal to the amount of wages the jury awarded him. The statutory damages provision in 3 CMC § 4447(d) provides: "In any action taken directly by or on behalf of a nonresident worker, notwithstanding any other remedies that may apply, the worker that prevails in such action shall recover unpaid wages and overtime compensation, an additional equal amount as liquidated damages, and court costs." Defendant claims that this section does not apply to the case because it only applies to the prevailing party in either an administrative action brought by a nonresident worker or a civil action brought by the Attorney General. In other words, defendant claims that this section on statutory damages is inapplicable because plaintiff prevailed on a breach of contract claim and not a claim under the Nonresident Workers Act.

Because the court is interpreting law of the Commonwealth of the Northern Mariana Islands ("Commonwealth"), the court must follow Commonwealth precedent. "Where [the Commonwealth Supreme Court] has not decided a legal issue, [the court] must use [its] best judgment to predict how that court would decide it." *Allen v. City of Los Angeles*, 92 F.3d 842, 847 (9th Cir. 1996).

In interpreting a statute, the goal is to ascertain and effectuate the legislative intent. Accordingly, three rules of statutory construction are particularly important in this situation. First, the court "must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981) (internal citations omitted)). Second, the court must analyze the statutory scheme as a whole. *Padish v. I.N.S.*, 358 F.3d 1161, 1170 (9th Cir. 2004). "In this regard, [the court] must 'mak[e] every effort not to interpret [the] provision [at issue] in a manner that renders other provisions of the same statute inconsistent, meaningless or

1 superfluous.” *Id.* at 1170-71. Third, “[the legislature] is presumed to act intentionally and purposely  
2 when it includes language in one section but omits it in another.” *Estate of Bell v. Commissioner*,  
3 928 F.2d 901, 904 (9th Cir. 1991).

4 On the face of the statute, it clearly states that it applies to “any action taken by a nonresident  
5 worker.” A nonresident worker is defined as “any available individual who is at least 18 years old  
6 and who is capable of performing services or labor desired by an employer and who is not a resident  
7 worker. Nonresident worker shall not include any immediate relative, spouse or children including  
8 legally adopted children of a U.S. citizen or any foreign investor.” 3 CMC § 4412(I) (2004).

9 Considering that the parties stipulated that Mr. Chung is a Korean citizen, Jointly Prepared Final  
10 Pre-Trial Order, No. 140 (Oct. 26, 2005), this case is an action taken by a nonresident worker.

11 Furthermore, section (d) states that “notwithstanding any other remedies that may apply,” the  
12 enumerated statutory damages are available to the “worker that prevails.” In this case, plaintiff  
13 prevailed on his breach of contract claim. Accordingly, the plain meaning of the statute indicates  
14 that the statutory damages provision applies to a situation like this one.

15 Defendant claims that the court cannot simply look at the section in isolation but must look  
16 to the entire statute to understand the plain meaning of the statutory damages provision. While  
17 defendant is correct, *see Padish*, 358 F.3d at 1170, its argument does not support its position that the  
18 statutory damages provision does not apply in this situation. The court looks to the context of the  
19 provision to interpret it in a consistent and meaningful way. *Id.* at 1170-71. Considering the entirety  
20 of the statute, awarding statutory damages in this situation supports the legislature’s goals of  
21 providing job preferences for resident workers while preventing the impairment of wages and  
22 working conditions of resident and nonresident workers.<sup>1</sup> *Loren v. E’Saipan Motors, Inc.*, 3 N. Mar.

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24 <sup>1</sup> For example, the Nonresident Workers Act specifies how a nonresident worker must be paid, 3  
25 CMC § 4436(c), that the minimum wage law applies, 3 CMC § 4437(b), that the employer is  
26 responsible for the nonresident worker’s health insurance, 3 CMC § 4437(c), that an employer is not  
permitted to withhold from a nonresident worker any identification certificate, passport, entry  
permit, or other document related to the status of the worker, and that the employer has the

1 I. Commw. 566, 576 (D. N. Mar. I. App. Div. 1988).

2 Furthermore, a contextual analysis of the statutory damages provision supports the  
3 application of statutory damages in this situation. For example, a comparison of subsection (c) to  
4 subsection (d) shows that the legislature intended “any action taken by a nonresident worker,” 3  
5 CMC § 4447(d) (2004), to be broader than any action against a person who “fails to comply with  
6 any provision of this chapter, or any rule, regulation, or order issued under this chapter, or any  
7 nonresident worker employment agreement,” 3 CMC § 4447(c) (2004). Because the court presumes  
8 that the legislature intentionally and purposely included the more limiting language in section (c)  
9 and intentionally and purposefully omitted such limiting language in section (d), the court is not  
10 persuaded by defendant’s argument that the statutory damages only applies to administrative actions  
11 brought by a nonresident worker for violations of the Nonresident Workers Act.<sup>2</sup>

12 Defendant claims that the Nonresident Workers Act was irrelevant to plaintiff’s claims so the  
13 statutory damages may not be granted. In essence, defendant claims that it will be prejudiced due to  
14 surprise. However, the subject of the Nonresident Workers Act was broached time and time again  
15 throughout the case and throughout trial. Both parties specifically referred to the Nonresident  
16 Workers Act during the examination of multiple witnesses during trial. Defendant had an  
17 opportunity to cross-examine witnesses that were questioned about the Nonresident Workers Act on  
18 direct examination. Defendant specifically asserted and presented evidence regarding the two year  
19 term limitation mandated by the Nonresident Workers Act. Moreover, the stipulated jury instructions  
20 included several provisions of the Nonresident Workers Act.

21 Defendant also claims that because plaintiff sought damages beyond that recoverable under  
22 the Nonresident Workers Act, plaintiff should not be permitted to recover statutory damages.

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23 obligation to pay for all costs of repatriation of the nonresident worker, 3 CMC § 4438(b) .

24 <sup>2</sup> A civil action brought by the Attorney General under 3 CMC § 4447(a) would not be covered by  
25 subsection (d) because the action is not brought by the worker, but rather, is brought by the Attorney  
26 General. Thus, defendant suggests that “any action” means only one type of action, *i.e.* an  
administrative action.

1 However, as the statute clearly indicates that “notwithstanding any other remedies that may apply”  
2 the enumerated statutory damages are available to the “worker that prevails,” plaintiff may recover  
3 more than unpaid wages if he proves to the jury that such a remedy is provided by law.

4 Defendant asserts that permitting plaintiff to recover statutory damages allows plaintiff to  
5 circumvent the exhaustion requirement of 3 CMC § 4434(f). However, the exhaustion of  
6 administrative remedies requirement only applies to grievances against an employer for violation of  
7 the Minimum Wage and Hour Act, 4 CMC § 9211 *et seq.*, and / or the Nonresident Workers Act, 3  
8 CMC § 4411 *et seq.*; it does not apply to a breach of contract claim.

9 Defendant further claims that even if the statutory damages are applicable to this case, the  
10 court has no way of determining what part of the jury award is attributed to unpaid wages. However,  
11 the court finds otherwise. While the statute does not specifically define the term “unpaid wages,”  
12 several sections of the statute refer to the Minimum Wage and Hour Act. The Minimum Wage and  
13 Hour Act defines “wage” paid by an employer as:

14 legal tender of the United States, or checks on banks convertible into cash on demand  
15 at face value, and includes in addition thereto the reasonable cost, as determined by the  
16 department, to the employer of furnishing an employee with board, lodging or other  
facilities which are customarily furnished by such employer to his or her employees.

17 None of the evidence or arguments for the breach of contract claim presented to the jury suggest that  
18 the award for breach of contract went beyond unpaid wages. The only possible damages the jury  
19 could have awarded was an \$80,000 salary for three years and a \$10,000 moving bonus, which are  
20 both “legal tender of the United States,” and an apartment rental for three years worth no more than  
21 \$1500 maximum per month, private school tuition for plaintiff’s child, and a provision for a vehicle,  
22 which are either “board, lodging or other facilities which are customarily furnished by such  
23 employer to his or her employees.”

24 **ACCORDINGLY**, considering the facts presented in the case and the fact that money paid  
25 to an employee under an employment contract are considered wages, **THE COURT** finds the  
26 amount of unpaid wages recovered by plaintiff to be in the amount of \$136,665.00, which is the total

1 amount the jury awarded plaintiff for his breach of contract claim. The court will amend judgment to  
2 include \$136,665.00 for statutory damages.

#### 4 **B. JUROR'S AFFIDAVIT**

5 Defendant argued, but did not make a formal motion, to strike juror's affidavit from  
6 plaintiff's motion to amend judgment. Motion to Amend Judgment Pursuant to Rule 59, No. 191  
7 (Dec. 22, 2005). Accordingly, the court, on its own initiative, strikes the juror's affidavit.

8 As a general rule, Federal Rule of Evidence 606(b) prohibits a juror from testifying as to any  
9 matter occurring during the course of jury deliberations. Because no exception to this rule applies in  
10 this situation, **THE COURT STRIKES** the juror's affidavit contained in Exhibit A of Declaration  
11 of Colin M. Thompson in Support of Motion to Amend Judgment Pursuant to Rule 59, No. 192  
12 (Dec. 22, 2005), with leave to allow plaintiff to file a motion to reconsider within fourteen days.

#### 14 **C. DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS**

15 The court must award defendant post-offer attorney's fees and costs "[i]f the judgment  
16 finally obtained by the offeree is not more favorable than the offer." Fed. R. Civ. P. 68; *Champion*  
17 *Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1027 (9th Cir. 2003) ("[A]bsent congressional  
18 expressions to the contrary, where the underlying statute defines 'costs' to include attorney's fees, []  
19 such fees are to be included as costs for purposes of Rule 68."); *United States v. Trident Seafoods*  
20 *Corp.*, 92 F.3d 855, 859 (9th Cir. 1996) ("The award is mandatory; Rule 68 leaves no room for the  
21 court's discretion."). Since defendant made a statutory offer of judgment according to Federal Rule  
22 of Civil Procedure 68 on October 1, 2005, in the amount of \$175,000, defendant's motion may only  
23 be granted if plaintiff obtained a judgment that is less than \$175,000.

24 Here, the court has ordered and adjudged that plaintiff recover from defendant in the amount  
25 of \$136,665.00 for plaintiff's breach of contract claim. In addition, as the court has granted  
26 plaintiff's motion to amend judgment, the amended judgment will also include an equal amount for



1 statutory damages.

2 **ACCORDINGLY**, because the judgment will be at least \$ 273,330, **THE COURT**  
3 **DENIES** defendant's motion for costs pursuant to Rule 68 and **DENIES** defendant's motion to  
4 amend judgment to include its costs.

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6 **D. PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS**

7 Pursuant to Federal Rule of Civil Procedure Rule 54(d)(2), plaintiff moves for an award of  
8 attorney's fees and costs. "An award of attorney's fees incurred in a suit based on state substantive  
9 law is generally governed by state law." *Champion Produce, Inc.*, 342 F.3d at 1024.

10 According to 3 CMC § 4447(d), plaintiff may be entitled to attorney's fees and costs that  
11 were incurred due to his breach of contract claim. However, because a mistrial was declared on the  
12 fraudulent misrepresentation claim, it is premature to grant plaintiff's motion for attorney's fees and  
13 costs. **ACCORDINGLY, THE COURT DENIES WITHOUT PREJUDICE** plaintiff's motion for  
14 attorney's fees and costs.

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16 **E. SANCTIONS**

17 Plaintiff moves the court under Federal Rule of Civil Procedure 37(c)(2) for sanctions in the  
18 amount of reasonable expenses, including reasonable attorney's fees, incurred for proving certain  
19 facts that plaintiff alleges that defendant failed to admit. However, because a mistrial was declared  
20 on the fraudulent misrepresentation claim, the interests of judicial economy require the court to defer  
21 this motion until the conclusion of the trial. **ACCORDINGLY, THE COURT DENIES**  
22 **WITHOUT PREJUDICE** plaintiff's motion for sanctions.

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24 **E. CERTIFICATION**

25 Defendant moves the court to certify a partial final judgment under Federal Rule of Civil  
26 Procedure 54(b) ("Rule 54(b)") to allow defendant to appeal the judgment in favor of plaintiff as to



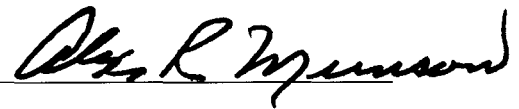
1 the breach of contract claim. Defendant argues that the court's policy of judicial economy and the  
2 injustice of needless delays favors defendant's motion because the Ninth Circuit may find that the  
3 court lacks subject matter jurisdiction over this case.

4 Before the court may grant certification under Rule 54(b), the court must determine whether  
5 there is more than one claim for relief and whether there is any just reason for delay. *Curtiss-Wright*  
6 *Corp. v. General Electric, Co.*, 446 U.S. 1, 8-9 (1980). Here, there are two separate claims for relief,  
7 one for a breach of contract and one for fraudulent misrepresentation. Thus, the first prong is  
8 satisfied.

9 However, the court finds that there is just reason to delay an appeal. Most importantly, an  
10 appeal during the pendency of plaintiff's second cause of action would delay the trial and possibly  
11 result in unavailability of witnesses and the aging of evidence. On the other hand, by denying  
12 certification, the trial will not be delayed. Furthermore, denying certification will allow one panel of  
13 the Ninth Circuit to review the entire record of the trial before rendering an opinion.

14 Accordingly, for the foregoing reasons, **THE COURT DENIES** defendant's motion for  
15 certification.

16 **DATED** this 21st day of February, 2006.

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22 Alex R. Munson  
23 Chief Judge  
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